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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
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Petition for Declaratory Ruling and
Rulemaking Regarding IP-Enabled Dial-
around Calls from Payphones)
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PETITION OF THE
AMERICAN PUBLIC COMMUNICATIONS COUNCIL
FOR A DECLARATORY RULING
AND PETITION FOR RULEMAKING TO ESTABLISH
THAT PAYPHONE-ORIGINATED IP-ENABLED COMMUNICATIONS
ARE SUBJECT TO PAYPHONE COMPENSATION

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THAT PAYPHONE-ORIGINATED IP-ENABLED COMMUNICATIONS
ARE SUBJECT TO PAYPHONE COMPENSATION**

The American Public Communications Council ("APCC") hereby requests the Commission to both issue a declaratory ruling and initiate a rulemaking proceeding to address payphone compensation for dial-around calls involving an Internet Protocol-enabled ("IP-enabled") component. Section 276 of the Communications Act makes clear that payphone service providers ("PSPs") must be compensated for the use of their payphones. 47 U.S.C. § 276. There is no basis under Section 276 for distinguishing between traditional PSTN calls from payphones and those involving IP-enabled communications. Certain IP-enabled service providers have, however, taken the position that they are not required to pay dial-around compensation. Matters are only going to become more uncertain as traffic continues to shift from the PSTN to IP-enabled networks. Prompt Commission action is required to ensure that PSPs are fully and fairly compensated as required by Section 276.

SUMMARY

APCC requests the Commission to both issue a declaratory ruling and initiate a rulemaking proceeding to address payphone compensation for dial-around calls involving an IP-enabled component. Such compensation is required by Section 276 of the Communications Act, which mandates that the payphone service providers ("PSPs") be compensated for each and every use of their payphones. 47 U.S.C. § 276. IP-enabled dial-around calls are increasingly common, and the Commission must act to ensure PSPs are fully compensated for such calls.

The Petition distinguishes between two general classifications of IP-enabled calls that originate from payphones: (1) those that originate as a traditional PSTN voice call, and (2) those that originate in IP. While the two categories are indistinguishable from the perspective of the PSP and the end user caller, and equally subject to Section 276's compensation mandate, the distinction is necessary because of the evolving nature of the Commission's regulation of IP-enabled services. The Commission has addressed the regulatory classification of PSTN-originated calls involving an IP-enabled component in previous orders. Therefore, the Commission can and should proceed by declaratory ruling with respect to those communications. The Commission, however, has not yet ruled on the status of IP-originated communications. For those communications, a rulemaking is the more appropriate vehicle.

In the declaratory ruling, the Commission should (1) affirm its prior rulings and make explicit that PSTN-originated dial-around calls from payphones are subject to the Commission's existing dial-around compensation rules, regardless of whether there is an IP-enabled service provider in the transmission path; and (2) make clear that IP-enabled service providers must comply with the compensation rules to the same extent as any other entity in the transmission path.

As shown below, for dial-around calls that both originate and terminate on the PSTN, the Commission has already resolved the issue in its order resolving AT&T's petition for declaratory ruling regarding the applicability of access charges to phone-to-phone IP-enabled services. With respect to dial-around calls that originate on the PSTN, but are terminated in IP, APCC believes that the purposes of the compensation rule are most effectively served if IP-enabled service providers are required to pay compensation when they perform the same call completion function as their non-IP-enabled counterparts. In APCC's view, most if not all IP-enabled service providers are indisputably "Completing Carriers" with clearcut compensation obligations under the plain meaning of the compensation rule. In any case, to the extent that the compensation rule is ambiguous, it should be interpreted to encompass IP-enabled service providers that complete calls in order to prevent frustration of the purposes of the rule.

In addition to issuing the declaratory ruling with respect to PSTN-originated IP-enabled calls, the Commission should also immediately begin a rulemaking to amend the compensation rule to ensure that it applies to IP-originated calls. A rulemaking is necessary because, while Section 276 clearly requires that PSPs be compensated for the use of their phone regardless of how the payphone happens to be connected to the network, the Commission's evolving framework for IP-enabled communications has not yet addressed the regulatory status of IP-enabled calls.

The rulemaking should amend the rules to make clear that IP-enabled providers must comply with the compensation rules to the same extent as any other entity in the call path. Holding the "completing" IP-enabled service provider liable in the same manner as a "Completing Carrier" (1) ensures that compensation is paid by the primary beneficiary, (2) ensures that compensation is paid by a party who can track calls to completion, and (3) reduces

the difficulty for PSPs and Intermediate Carriers in determining which entity has the compensation obligation.

I. INTRODUCTION

APCC is seeking the declaratory ruling and the initiation of a rulemaking proceeding in conjunction with one another so that the Commission can make clear that all forms of IP-enabled calls from payphones are subject to the compensation requirement of Section 276. This Petition distinguishes between two general classifications of IP-enabled calls that originate from payphones: (1) those that originate as a traditional PSTN voice call, and (2) those that originate in IP.

While the two categories are indistinguishable from the perspective of the PSP and the end user caller—both in terms of their "look and feel" and in their use of the payphone equipment—and equally subject to Section 276's compensation mandate, the distinction is necessary because of the evolving nature of the Commission's regulation of IP-enabled services. The Commission has addressed the regulatory classification of PSTN-originated calls involving an IP-enabled component in previous orders. Therefore, the Commission can and should proceed by declaratory ruling with respect to those communications. The Commission, however, has not yet ruled on the status of IP-originated communications. For those communications, a rulemaking is the more appropriate vehicle.

Another reason to treat the two categories separately is that, at present, PSTN-originated calls constitute all of the dial-around calls made from payphones.¹ Currently, PSPs have no viable use for broadband and have no way to recover the cost of a broadband connection to the network. Without broadband, PSPs and payphone callers have no way of availing themselves of

¹ Payphones are connected to the TDM, circuit-switched PSTN. While some small percentage provide a dataport and thus allow for dial-up Internet access, such access is provided by the payphone user placing a call to a toll-free access number, which is a conventional, PSTN dial-around call.

IP-enabled service offerings. This, however, could begin to change over time if and when applications for the viable use of broadband develop, giving PSPs a way to recover the cost of a broadband connection to the network. Because PSPs will not transition to IP-enabled services if it means losing dial-around compensation, the Commission must address dial-around compensation for IP-originated calls, or it risks relegating PSPs to the PSTN and potentially depriving payphone users of valuable benefits. Thus, the Commission must address both PSTN-originated and IP-originated calls, and the twin vehicles of a declaratory ruling and a rulemaking proceeding allow it to do so.

In the declaratory ruling, the Commission should (1) affirm its prior rulings and make explicit that PSTN-originated dial-around calls from payphones are subject to the Commission's existing dial-around compensation rules,² regardless of whether there is an IP-enabled service provider in the transmission path; and (2) make clear that IP-enabled service providers must comply with the compensation rules to the same extent as any other entity in the transmission path.

While PSTN-originated payphone calls with an IP-enabled component are indistinguishable from traditional PSTN dial-around calls, and there should be no debate over the applicability of the dial-around rules, a declaratory ruling is unfortunately necessary. Although Section 276 unambiguously requires that PSPs be compensated for the use of their payphones, and neither the statute nor the Commission's rules exclude IP-enabled communications, others apparently do not agree. At least two IP-enabled service providers, iBasis and Callipso, have submitted filings to the Commission in which they deny that they are subject to the dial-around

² See 47 C.F.R. §§ 64.1300-1320.

compensation rules.³ These service providers state that they are willing to pay compensation “voluntarily,” but to APCC’s knowledge neither one has yet submitted an audit report verifying that the service provider is accurately tracking payphone calls.⁴ Moreover, PSPs can take little comfort from compensation payments that can be terminated at the will of the service provider.⁵

In requesting this declaratory ruling, APCC is not asking the Commission to prejudge any of the issues pending in the *IP-Enabled Services NPRM*.⁶ Rather, APCC is seeking limited relief, narrowly tailored to ensuring that, as Section 276 requires, PSPs are compensated for the use of their payphones for PSTN-originated calls that are partially IP-enabled, just as they would be for any other PSTN-originated call.

In addition to issuing the declaratory ruling, the Commission should also begin a rulemaking to amend its payphone compensation rules to ensure that decisions in the *IP-Enabled Services* rulemaking and other proceedings⁷ do not incidentally result in disruption of payphone

³ See Callipso Corporation, Motion for Extension of Time, CC Docket No. 96-128 (filed June 23, 2004) (attached as Attachment 2); iBasis, Inc., Updated Submission in CC Docket No. 96-128 Addressing C.F.R. Section 64.1300 et seq. (filed November 24, 2004) (“iBasis Updated Submission”) (attached as Attachment 3).

⁴ iBasis paid what it terms “voluntary” dial-around compensation payments and has said that it intends to file an audit report. iBasis Updated Submission at 2. While APCC appreciates iBasis’ efforts to explore the issues raised by its service offerings, in the end, iBasis’ proposed “voluntary” compliance with a rule that it says it is not subject to, is insufficient to protect PSPs’ right to compensation under Section 276.

⁵ Furthermore, there is no way to know how many other IP-enabled carriers have opted to simply remain silent and are not paying compensation. PSPs also have no way of knowing the extent to which Intermediate Carriers may be sending traffic to IP-enabled providers and not reporting them because the provider has taken the position that it is not a carrier subject to the compensation rules.

⁶ *IP-Enabled Services*, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

⁷ See, e.g., Petition of SBC Communications Inc. for Forbearance, WC Docket No. 04-29 (filed February 5, 2004).

compensation. (Proposed amended rules are attached as Attachment 4.) The Commission's rules must make it clear that, regardless of the applicable regulatory classification, IP-originated payphone calls are subject to the dial-around rules. The Commission should also be clear that, where an IP-enabled service completes such a call, it bears the compensation obligation, and that all IP-enabled providers in the call path must arrange for Flex ANI digits to be provided for call tracking purposes.

Unless the Commission takes affirmative steps to address the issue, PSPs could face significant erosion of their ability to collect compensation. For example, if the Commission determines that IP service providers who complete IP-to-PSTN communications are not to be classified as "telecommunications carriers," such providers would likely claim that they are not "Completing Carriers" and are not required to make dial-around compensation payments. Alternatively, faced with the prospect of losing dial-around compensation, PSPs might forego the benefits of new IP-enabled services offerings that develop, a result that would effectively lock PSPs on the legacy TDM circuit-switched network and deprive the consuming public of the benefits of publicly available enhanced applications.

II. SECTION 276 REQUIRES THAT PSPS BE COMPENSATED FOR DIAL-AROUND CALLS, REGARDLESS OF WHETHER THE CALL INCLUDES AN IP-ENABLED COMPONENT

The dial-around compensation obligation is rooted in Section 276 of the Act. Section 276 of the Act requires the Commission to:

Establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for *each and every completed intrastate and interstate call* using their payphone, except that emergency calls and telecommunications relay service calls for hearing disabled individuals shall not be subject to such compensation.

47 U.S.C. §276(b)(1)(A)(emphasis added). The Act thus requires that PSPs be compensated for "each and every" completed call, without distinction. As the House Report that accompanied

Section 276 makes clear, the intent was to ensure that PSPs are compensated whenever their payphone equipment is used. Congress directed the FCC to

establish a new system whereby all [PSPs] . . . are fairly compensated for every interstate and intrastate call made using their payphones, including, for example "toll-free" calls to subscribers to 800 and new 888 services and calls dialed by means of carrier access codes. Carriers and customers that benefit from the availability of a payphone should pay for the service they receive when a payphone is used to place a call.

H.R. Rep. No. 104-204, pt. 1, at 88 (1995). In other words, the intent of Section 276 is to ensure that PSPs are compensated for the use of their payphones whenever and however used. There are no conditions attached to the compensation requirement, such as that a call must be completed over the PSTN, or over circuit-switched channels, or by means of common carrier services, in order to be compensable.⁸

This is all the more the case given that, from the perspective of the caller and from the perspective of the PSP itself, there is no material distinction between a payphone-originated communication that uses the PSTN entirely and one that uses the IP network after it leaves the payphone. In either case, (1) the caller uses the payphone in the same way, (2) the caller and called party derive a benefit from using the payphone, (3) the payphone is tied up for the duration of the communication, precluding other revenue-generating uses of the payphone, and (4) the PSP is unable to prevent the caller from using the payphone. It would be arbitrary and capricious to rule that, just because the service provider handling the communication makes use

⁸ Conceivably, it might be argued that communications utilizing IP are not "calls," within the meaning of Section 276. That view, however, is untenable in light of the history and purpose of Section 276. The use of the word calls, rather than some more generic equivalent such as sessions, reflects only the fact that Section 276 was added to the Act in 1996 and thus predates the migration to IP networks and the new vocabulary that has resulted. The purpose and intent of Section 276 make clear that Congress' intent is to ensure compensation whenever a PSP's payphone equipment is used. There is no basis for removing otherwise compensable calls from compensation simply because of a change in the underlying transmission technology.

of an IP network in order to complete the call, the PSP is not entitled to be compensated for that call.

Therefore, even if the Commission ultimately decides that some forms of IP-enabled communications are not telecommunications in some other context, the Commission should rule that a dial-around call made from a payphone is a “call” subject to compensation under Section 276, regardless of whether, or to what extent, the communication traverses an IP network after it leaves the payphone.

III. DESCRIPTION OF IP-ENABLED DIAL-AROUND CALLS

In this section of the Petition, we first describe various permutations of carriers that may be involved in traditional circuit-switched dial-around calls that do not involve IP-enabled communications in the call path. Then we describe analogous permutations that can occur using IP-enabled services. These permutations of circuit-switched and IP-enabled dial-around calls are illustrated graphically by diagrams found in Attachment 1 to this Petition, “Payphone Dial-Around Compensation and IP-Enabled Services” (*“Payphone-IP Diagrams”*).

A. Dial-Around Calls

A dial-around call is initiated when a caller dials a toll-free number (usually an 800, 888, 877, etc. number) from a payphone. The PSP receives no payment from the caller for the use of its payphone to make these kinds of calls. There are two types of dial-around calls: (1) subscriber toll-free calls, in which the caller dials a toll-free number in order to reach a business or person subscribing to that toll-free number; and (2) access code calls, in which the caller dials a toll-free number belonging to a communications service provider in order to “access” the provider’s call processing platform, where the caller provides billing information and dials another number to complete the call to the intended called party. There are, in turn, primarily three kinds of access code calls: (1) calling card calls; (2) collect calls; and (3) prepaid card calls.

In general, the Commission's payphone compensation rules require the "Completing Carrier" of a dial-around call to pay compensation to the PSP for the use of the payphone. 47 CFR § 64.1300(b). The "Completing Carrier" for a long distance call is defined as "a long distance carrier or switch-based long distance reseller that completes a coinless access code or subscriber toll-free payphone call." *Id.*, § 64.1300(a).⁹ As the Commission's orders make clear, in general the "Completing Carrier" is the carrier which has the billing arrangement with the party billed for the call. In the case of calling card calls, the billed end user is generally the caller; in the case of subscriber 800 and collect calls, it is generally the called party.

There are various possible permutations of carriers that can be involved in a circuit-switched dial-around call. In the simplest and most common access code calling scenario, the payphone caller dials a ten-digit toll-free "access code" number belonging to an interexchange carrier ("IXC") that owns its own long distance network. The originating local exchange carrier ("LEC") hands off the call to the IXC's facilities that bring the call to a call processing platform. At the platform, the caller provides billing information (*e.g.*, a calling card or prepaid card number) to the IXC and dials the number of the intended called party. The IXC then routes the call over its own facilities and sends the call to the terminating LEC. *Payphone-IP Diagrams* at 3.

In another common access code calling scenario, the caller dials an access code belonging to a switch-based reseller of long distance service ("SBR"). The originating LEC hands off the call to a facilities-based IXC, who routes the call to the SBR's call-processing platform. The caller provides billing information to the SBR and dials the number of the

⁹ The "Completing Carrier" for a local call is defined as "a local exchange carrier that completes a local, coinless access code or subscriber toll-free payphone call." 47 C.F.R. § 64.1300(a).

intended called party. The SBR then routes the call over its own facilities or another carrier's facilities and sends the call to the terminating LEC. *Payphone-IP Diagrams* at 8.

Similar scenarios can occur with subscriber toll-free calls, with the difference that there is no need for the call to "pause" at a call processing platform, because the toll-free number belongs to the called party.¹⁰ Like access code calls, calls to subscriber toll-free numbers can be completed either by a facilities-based IXC or by a SBR.

B. IP-Enabled Dial-Around Calls

IP networks can be used to transport dial-around calls in a variety of ways, each of which is analogous to one of the circuit-switched scenarios described above. Below, we describe several typical variations. The variations fall into three overarching categories: calls that both originate and terminate on the PSTN, but which have an IP-enabled component in the call path; calls that originate on the PSTN, but which terminate in IP; and calls that originate in IP.¹¹

1. PSTN-to-PSTN Calls

In the simplest and, at present, most common IP-enabled scenario, a payphone caller dials a ten-digit toll-free "access code" number belonging to an IXC that owns its own network. Just as in the corresponding circuit-switched scenario, the caller reaches the IXC's calling card or prepaid card platform, provides billing information, and dials the called party's ten-digit telephone number. And just as in the corresponding circuit-switched scenario, the IXC routes

¹⁰ With subscriber toll-free numbers, due to toll-free number portability, the toll-free number "belongs" to an end user rather than a carrier. The toll-free subscriber, through its Resporg (which may be the subscriber's carrier), has arranged to have a specific carrier handle its toll-free calls, and the originating LEC, after consulting the toll-free number routing data base, routes the call to the carrier designated by the subscriber.

¹¹ For IP-originated calls, we do not distinguish between those that terminate on the PSTN as opposed to in IP because, at least in terms of how the dial-around compensation rules apply, it is a distinction without a difference.

the call through its network and terminates the call on the PSTN to an ordinary telephone, allowing the caller to have a two-way voice conversation with the called party. Again as in the corresponding circuit-switched scenario, the IXC bills the cardholder for the call. The only difference is that, at some point in the call path, the IXC converts the transmission protocol from circuit-switched to IP for long haul, and then, farther along in the call path, converts the transmission protocol back to circuit-switched so that the call can be delivered to the called party over the PSTN. *Payphone-IP Diagrams* at 4. This difference, however, is not apparent to the caller, the called party, or the PSP. From their points of view, the call is no different from an ordinary circuit-switched call.¹²

In a variation of the scenario just described, the IXC does not itself convert the call to IP format. Instead, after processing the call at its platform (where the caller provides billing information and dials the called party's number) the IXC hands off the call to another provider which performs the conversion and then routes the call onward. At some point before the call reaches the called party, it is reconverted to circuit-switched protocol and then terminated over the PSTN. *Payphone-IP Diagrams* at 13.¹³

In yet another variation on the PSTN-to-PSTN IP-enabled calls, the call is completed, and the cardholder billed, by an IP-enabled service provider who purchases service from a

¹² In a variation on the scenario described in the accompanying text, the IP-enabled IXC hands off the call (while still in IP format) to an Internet service provider or CLEC, who then converts the call from IP to circuit-switched protocol for delivery to the called party over traditional PSTN facilities. *Payphone-IP Diagrams* at 5. As in the scenario described in the accompanying text, the IP-enabled IXC bills the cardholder for the call. The only difference between the two scenarios is that, instead of the IP-enabled IXC reconvertng the call from IP to PSTN itself, it hands the call to a second entity to perform that function.

¹³ iBasis describes apparently the same scenario in its filing. According to iBasis, in its "wholesale" model, it plays the role of the second provider in the chain. See iBasis Updated Submission at 3. While iBasis describes an international call, the scenario would be no different for a domestic call.

facilities-based IXC. The IXC hands off the circuit-switched call to the service provider. If this service provider then completed the call in circuit-switched protocol, the provider would be classified as a SBR for purposes of the compensation rule, and would be required to pay compensation directly to the PSP. Instead of routing the call onward in circuit-switched protocol, however, in this scenario the IP-enabled service provider converts the call to IP, routes it over an IP network, and then has the call reconverted to circuit-switched protocol for delivery to the called party's telephone over the PSTN, ultimately completing the call in the same manner as any SBR. *Payphone-IP Diagrams* at 9.¹⁴

All of these scenarios are variations on the same theme: in each case the call both originates and terminates on the PSTN. In each scenario, the only use of IP communications is as a transmission medium completely internal to the call; the fact that the call has an IP-enabled component is completely transparent to the caller, the called party, and the PSP.

Although the attached diagrams define the IP-enabled dial-around calls in these various scenarios as access code calls (*e.g.*, calling card or prepaid card calls), subscriber toll-free calls also can be IP-enabled, and the same types of permutations are possible. Regardless of which type of call is being made, and regardless of how many carriers are involved, the tasks performed by the caller and the caller's perception of the call are exactly the same as in the corresponding circuit-switched scenario. Again, the only difference is that, at some point in the call path, the transmission protocol is converted from circuit-switched to IP, and then, further along in the call

¹⁴ In yet another variation, the IP-enabled provider in the scenario described in the accompanying text hands off the call (while still in IP format) to an ISP or CLEC, which then converts the call from IP to circuit-switched protocol for delivery over traditional PSTN facilities. *Payphone-IP Diagrams* at 12. This seems to be the "retail" scenario described in iBasis' FCC filing. See iBasis Updated Submission at 1-2. Again, although the service iBasis describes involves international calls, the basic pattern would be the same for domestic calls.

path, converted back to circuit-switched—a difference that is not apparent to the caller, the called party, or the PSP.

2. PSTN to IP Calls

The same IP-enabled scenarios described above can be repeated but with one difference: The call is never reconverted from IP back to circuit-switched protocol before being delivered to the called party. Instead, it is delivered to the called party in IP format, where it is received by the called party at a computer, a special IP-enabled telephone, or, as in the Vonage model, through a traditional telephone that has an adapter that performs the conversion. Again, the simplest, and possibly most common scenario, is where a facilities-based IXC converts the call to IP, routes the call over an IP network, and delivers the call to the called party either over its own broadband facilities (*Payphone-IP Diagrams* at 6) or those of another IP-enabled service provider (*id.* at 7).

Alternatively, the call could be completed, and the cardholder billed, by a provider (analogous to the SBR in a circuit-switched call) which purchases service from a facilities-based IXC, converts the call to IP, sends it over the Internet or another IP network, and then has the call delivered to the called party either over its own broadband facilities or those of another IP-enabled provider. *Payphone-IP Diagrams* at 10, 11.

As with PSTN-to-PSTN scenarios, the calls involved in PSTN-to-IP scenarios can be either access code calls, for which billing arrangements are made while the call “pauses” at a call processing platform, or subscriber 800 calls, which are delivered directly to the called party and are billed to the called party through prior arrangements.

3. IP-Originated Calls

While currently all or nearly all payphones are subscribed to circuit-switched connections to the PSTN, and there are no viable IP-enabled alternatives for payphones, this may change in

the future. If a PSP was able to utilize an IP connection to connect its payphone to the network, dial-around calls made from the payphone would follow all of the variants list above but with the distinction that the call originated in IP. While, as discussed below, that difference is significant in that the Commission has not yet addressed the regulatory classification of IP-originated communications, it should not affect PSPs' rights to compensation under Section 276.

IV. THE COMMISSION SHOULD ISSUE A DECLARATORY RULING THAT MAKES CLEAR THAT ALL PSTN-ORIGINATED CALLS FROM A PAYPHONE ARE SUBJECT TO ITS EXISTING DIAL-AROUND COMPENSATION RULES

The Commission can and should clarify that (1) the current compensation rule requires compensation for IP-enabled dial-around calls that originate from the payphone on the PSTN, and (2) that IP-enabled service providers must comply with the compensation rules to the same extent as any other entity in the transmission path. As shown below, for dial-around calls that both originate and terminate on the PSTN, the Commission has already resolved the issue in its order resolving AT&T's petition for declaratory ruling regarding the applicability of access charges to phone-to-phone IP-enabled services. *See Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, 19 FCC Rcd 7457 (2004) ("AT&T"). With respect to dial-around calls that originate on the PSTN, but are terminated in IP, APCC believes that the purposes of the compensation rule are most effectively served if IP-enabled service providers are required to pay compensation when they perform the same call completion function as their non-IP-enabled counterparts. In APCC's view, most if not all IP-enabled service providers are indisputably "Completing Carriers" with clearcut compensation obligations under the plain meaning of the compensation rule. In any case, to the extent that the compensation rule is ambiguous, it should be interpreted to encompass IP-enabled service providers that complete calls in order to prevent frustration of the purposes of the rule.

A. An IP-Enabled Service Provider Who Completes A PSTN-to-PSTN Dial-Around Call Is A “Completing Carrier” And Has The Compensation Obligation Under The Rule

The Commission has already conclusively addressed the status of the PSTN-to-PSTN scenarios described in Section III.B.1 in its *AT&T* ruling. As discussed above, all of the PSTN-to-PSTN scenarios have the following common features:

- the call originates on the PSTN as an ordinary voice call using conventional CPE (i.e. a payphone with a circuit-switched connection to the PSTN);
- at some point in the call path, the call is converted from circuit-switching to IP for long haul transmission over an IP network, and, prior to reaching its destination, the call is converted back from IP to circuit switching;
- the call terminates on the PSTN as an ordinary voice call using conventional CPE;
- the payphone caller, the called party, and the PSP all perceive the call to be an ordinary voice call; and
- any IP-enabled component of the call is completely internal to the call and IP is used solely as a transmission technology.

These are exactly the same features that the Commission found to be a telecommunications service in the *AT&T* order. As the Commission held there:

Users of AT&T’s specific service obtain only voice transmission with no net protocol conversion End-user customers do not order a different service, pay different rates, or place and receive calls any differently than they do through AT&T’s traditional circuit-switched long distance service; the decision to use its Internet backbone to route certain calls is made internally by AT&T. To the extent that protocol conversions associated with AT&T’s specific service take place within its network, they appear to be “internetworking” conversions, which the Commission has found to be telecommunications services. We clarify, therefore, that AT&T’s specific service constitutes a telecommunications service.

AT&T ¶ 12 (citations omitted). The Commission also made clear in *AT&T* that the logic and holding of that decision are not limited only to the specific fact pattern presented by AT&T, in which a single carrier performs an internal PSTN-IP conversion within its network and then reconverts the call for delivery. Rather, the analysis “applies to services that meet [the *AT&T*]

criteria regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport.” *AT&T* ¶ 19. Thus, “when a provider of IP-enabled voice services contracts with an interexchange carrier to deliver interexchange calls that begin on the PSTN, undergo no net protocol conversion, and terminate on the PSTN,” the call is a telecommunications service. *Id.*

In *AT&T*, the Commission went on from its finding that the service in question was a telecommunications service to conclude that access charges applied to the service. It is equally true that, for services which meet the *AT&T* criteria, including all of the scenarios described in Section III.B.1 above, the call is a “telecommunications service,” and the completing service provider in such cases would be a “Completing Carrier” for purposes of the Commission’s compensation rule.¹⁵ The compensation rule states:

(a) For purposes of this subpart, a Completing Carrier is a long distance carrier or switch-based long distance reseller that completes a coinless access code or subscriber toll-free payphone call or a local exchange carrier that completes a local, coinless access code or subscriber toll-free payphone call.

¹⁵ The compensation rule also states that the Completing Carrier pays when it completes a call “from a switch.” 47 CFR §64.1300(b). The question might conceivably be raised whether an IP-based service provider completes a call “from a switch” for purposes of the compensation rule. It might be argued that the facilities used to send calls over IP networks are not “switches” but “routers.” The terms “switch” and “router” however, are not mutually exclusive, and both terms are used to describe IP network functions. For example, the Commission’s UNE rules defined the packet switching network element as follows:

The packet *switching* capability network element is defined as the basic packet *switching* function of *routing* or forwarding packets, frames, cells or other data units based on address or other routine information contained in the packets, frames, cells or other data units,

47 CFR § 51.319(c)(4)(2002). At most the rule is ambiguous. Moreover, as explained below, an IP-based service provider generally satisfies the policy criteria underlying the Commission’s decision to place compensation responsibility on “Completing Carriers.” Therefore, it is consistent with the purposes of the rule to interpret “switch” broadly to include the type of equipment used in IP networks.

(b) Except as provided herein, a Completing Carrier that completes a coinless access code or subscriber toll-free payphone call from a switch that the Completing Carrier either owns or leases shall compensate the payphone service provider for that call at a rate agreed upon by the parties by contract.

* * *

(d) In the absence of an agreement as required by paragraph (b) of this section, the carrier is obligated to compensate the payphone service provider at a per-call rate of \$.494.

47 CFR § 64.1300 (emphasis added).

If a PSTN-to-PSTN dial-around call is a telecommunications service, then the service provider who completes the call is a "carrier" (and is also the "Completing Carrier") within the meaning of the rule. As noted above, the PSTN-to-PSTN scenarios for IP-enabled dial-around calls look exactly the same as the corresponding circuit-switched scenarios in which the Completing Carrier has a clearcut obligation to pay compensation. The only difference is that, at some point in the path of the call through the network, the call is converted from circuit-switched protocol to IP, and then at a later point the call is converted back to circuit-switched protocol so that it can be delivered to the called party over the PSTN.

The *AT&T* order thus conclusively resolves the issue of whether PSTN-to-PSTN dial-around calls with an IP-enabled component are subject to the dial-around compensation rules. However, given that some IP-enabled providers have taken the position that they are not subject to the compensation rules, the Commission must issue the declaratory ruling requested here in order to compel compliance with the rule and to ensure that PSPs are, as Section 276 requires, fully compensated for the use of their payphones.¹⁶

¹⁶ The declaratory ruling is also necessary to clarify the obligations of Intermediate Carriers, who currently may or may not be reporting tracking information to the IP-enabled providers to whom they route calls.

B. Regarding PSTN-to-IP Scenarios, the Commission Should Resolve Any Alleged Ambiguity In Favor Of Finding That The IP-Enabled Service Provider Has The Compensation Obligation Under The Rule

In the "PSTN-to-IP" scenarios, as discussed above, the call looks exactly like a "PSTN-to-PSTN" communication until it reaches the called party, when, instead of terminating over the PSTN to an ordinary telephone, the call terminates over a broadband connection to a computer or specialized IP-enabled telephone. In all other respects, the call appears no different from an ordinary dial-around call. In the access code example, the payphone caller dials a ten-digit toll-free number, reaches a calling card or prepaid card platform, provides billing information, and dials the called party's ten-digit telephone number. The card holder is billed in the same manner as in a PSTN-to-PSTN communication. In these and other respects, the communication appears to the parties no different from an ordinary circuit-switched telephone communication.

As discussed above, in the typical access code calling scenario, the fact that a call terminates on a broadband connection to a computer, specialized IP phone, or conventional CPE via a terminal adapter, is wholly incidental to the nature of the service offered. The prepaid card and calling card services that utilize access codes are typically intended to be used ubiquitously to call from any location to virtually anywhere in the world. When an access code call made from a payphone is terminated in IP, the fundamental character of the communications service remains unchanged. The same dialing patterns are used, the same billing arrangements apply, and there is no more deviation from straightforward two-way voice-only communications than there would be with an IP-enabled call that terminates as a circuit-switched call on the PSTN.

1. Where Termination in IP Is Incidental To The Nature Of The Service, The IP-Enabled Service Provider Is A Completing Carrier And Has The Payment Obligation Under The Compensation Rule

Although the Commission's rulings on classification of IP-enabled services do not directly address the regulatory classification of PSTN-to-IP services, the logic of those rulings compel a finding that PSTN-to-IP should be treated the same as PSTN-to-PSTN, at least in the

dial-around context. The Commission established the framework for its analysis In the 1998 *Stevens Report*.¹⁷ There, the Commission addressed phone-to-phone IP-enabled services and found, on the record before it, “that this type of IP telephony . . . bear(s) the characteristics of ‘telecommunications services.’” *Id.* ¶ 89. While the *Stevens Report* did not specifically address PSTN-to-IP calls, all of the factors that the Commission identified as the basis for its finding phone-to-phone IP-enabled calls appear to be telecommunications are equally applicable to PSTN-to-IP dial-around calls. The Commission found phone-to-phone IP-enabled calls include services in which the provider meets the following conditions:

- (1) it holds itself out as providing voice telephony or facsimile transmission service; (2) it does *not* require the customer to use CPE different from that CPE necessary to place an ordinary touch-tone call; (3) it allows the customer to call telephone numbers assigned in accordance with the North American Numbering Plan and associated international agreements; and (4) it transmits customer information without net change in form or content.

Id. ¶ 88.

PSTN-to-IP dial-around calls meet all four factors: they are voice calls, placed from a payphone, to a NANP number, and the “customer information,” i.e. the voice communication between the payphone user and the called party is transmitted without any change in form or content. While there is a net protocol conversion, it simply allows for the intercommunication between two different networks. The conversion does not change the form or content of the information and is wholly transparent to both the caller and the called party. As the Commission found to be the case with phone-to-phone IP-enabled calls, “[f]rom a functional standpoint,” PSTN-to-IP dial-around callers, “obtain only voice transmission, rather than information services such as access to stored files.” *Stevens Report* ¶ 89. And, as with phone-to-phone IP-enabled

¹⁷ *Federal-State Joint Board on Universal Service*, Report to Congress, 13 FCC Rcd 11501 (1998).

calls, IP-enabled providers transmitting PSTN-to-IP dial-around calls “do[] not offer a capability for generating, acquiring, storing, processing [beyond the format conversion itself], retrieving, utilizing, or making available information.” *Id.*

IP-to-PSTN dial-around calls similarly meet all of the factors identified in *AT&T*, again with the exception that there is a net protocol conversion. *See AT&T* ¶ 12. However, nowhere did the Commission say in *AT&T* that, had there been a net protocol conversion, the service would have been transformed into an information service. Indeed, it is apparent from the thrust of the Commission’s discussion that phone-to-phone IP-enabled calls are a telecommunications service because they amount to no more than the simple transmission of voice communications between the caller and called party. This is equally true with respect to phone-to-IP dial-around calls; the protocol conversion that allows for the intercommunication between two network protocols simply undergirds the basic transmission of information.

The Commission has long held that where enhanced or information service functions are “incidental” to an underlying telecommunications service and do not alter their “fundamental character,” the inclusion of such functions does not transform an otherwise basic service into an enhanced or information service.¹⁸ Similarly, the Commission has held that if a service involves

¹⁸ *See, e.g., AT&T Corp. Petition for Declaratory Ruling Regarding Enhanced Prepaid Calling Card Services*, Order and Notice of Proposed Rulemaking, WC Docket No. 03-133, FCC 05-41, ¶16 (rel. February 23, 2005); *Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards*, CC Docket No. 91-115, Report and Order and Request for Supplemental Comment, 7 FCC Rcd 3528, 3531, ¶ 19 (1992) (validation and screening services are “incidental” to the provision of local exchange access service and therefore subject to Title II regulation); *North American Telecommunications Association Petition for Declaratory Ruling Under § 64.702 of the Commission’s Rules Regarding the Integration of Centrex, Enhanced Services, and Customer Premises Equipment*, ENF 84-2, Memorandum Opinion and Order, 101 FCC 2d 349, 359-361, ¶¶ 24-28 (1985) (services that “facilitate the provision of basic services without altering their fundamental character” are not considered enhanced services), *recon.*, 3 FCC Rcd 4385, 4386, ¶¶ 8-9 (1988); *Beehive Telephone v. The Bell Operating Companies*, File No. E-94-57, Memorandum Opinion and Order, 10 FCC Rcd 10562, 10566, ¶ 21 (1995) (“services that are incidental or adjunct to the